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6 Attorneys for Defendant
7 TEKNI-PLEX, INC., sued herein as
COLORITE PLASTIC COMPANY

8

UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 || SAN FRANCISCO DIVISION

12 PEPPER BEALL MAUPIN, CASE NO. CV-08-1513 MHP

12 PEPPER BEALL MAUPIN,) CASE NO. CV-08-1513 MHP
13 Plaintiff,)
14 v.)
15 COLORITE PLASTIC COMPANY,)
16 Defendant.)
17)
18)
_____) Complaint served: April 30, 2008
)
) DEFENDANT TEKNI-PLEX, INC.'S
) APPLICATION FOR LEAVE OF
) COURT TO FILE A MOTION TO
) DISMISS PRIOR TO THE INITIAL
) CASE MANAGEMENT CONFERENCE,
) OR, IN THE ALTERNATIVE, TO
) ADJOURN THE DEADLINE TO MOVE
) TO DISMISS OR TO ANSWER THE
) COMPLAINT

Pursuant to standing Order No. 4 of the Honorable Marilyn H. Patel, defendant Tekni-Plex, Inc., sued as Colorite Plastic Company (“defendant”), hereby requests leave to file a motion to dismiss the complaint in this action (“Complaint”) pursuant to Federal Rules of Civil Procedure 12(b)(6), 9(b), and 12(b)(1) for failure to state a claim upon which relief may be granted, for failure to plead her claims with the requisite particularity, for lack of subject matter jurisdiction, and for failure to comply with the procedural requirements of California Civil Code §§ 1780(c) and 1782 of the California Consumer Legal Remedies Act. Leave of Court is requested for the following reasons:

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DEFENDANT'S APPLICATION FOR LEAVE TO FILE A MOTION TO DISMISS PRIOR TO THE INITIAL CASE MANAGEMENT CONFERENCE, OR, IN THE ALTERNATIVE, TO ADJOURN THE DEADLINE TO MOVE OR ANSWER THE COMPLAINT
CASE NO. CV 08-1513 MHP

1 1. The above referenced case was assigned to Your Honor on May 14, 2008.

2 2. The initial Case Management Conference in this case has been scheduled for July
3 14, 2008.

4 3. Currently, the deadline under the Federal Rules of Civil Procedure for defendant to
5 move or to answer the Complaint is Monday, May 19, 2008.

6 4. Defendant has been diligently working to prepare a motion to dismiss the
7 Complaint, and had planned to file such motion on May 19, 2008.

8 5. Defendant is aware that Your Honor's Standing Order Number 4 states: "Motions to
9 dismiss shall not be filed before the initial Case Management Conference except by leave of
10 Court."

11 6. Defendant believes that its motion to dismiss may dispose of the Complaint or
12 substantially narrow the scope of the litigation, which would serve the interests of judicial
13 economy.

14 7. Accordingly, defendant respectfully seeks leave to file a motion to dismiss in
15 advance of the July 14, 2008 initial Case Management Conference.

16 8. Should the Court grant defendant leave to file its motion to dismiss on May 19,
17 2008, defendant expects that briefing will be complete prior to the scheduled initial Case
18 Management Conference.

19 9. In the alternative, defendant respectfully requests that the Court adjourn the deadline
20 to move to dismiss or to answer the Complaint until ten days after the initial Case Management
21 Conference.

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Accordingly, defendant asserts that there is good cause for granting leave as requested in this application.

Dated: May 15, 2008

Respectfully Submitted,

DAVIS POLK & WARDWELL

By: /s/ Neal A. Potischman
Neal A. Potischman (Bar No. 254862)
Stephanie E. Lockwood (Bar No. 238215)

Attorneys for Defendant
TEKNI-PLEX, INC., sued as
COLORITE PLASTIC COMPANY

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UNITED STATES DISTRICT COURT

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SAN FRANCISCO DIVISION

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19 The Court, having considered the application of defendant Tekni-Plex, Inc. for leave of
20 Court to file a motion to dismiss prior to the Initial Case Management Conference currently
21 scheduled for July 14, 2008, and GOOD CAUSE APPEARING THEREFOR,

22 Defendant's application for leave of Court to file their motion to dismiss on May 19, 2008
23 is hereby **GRANTED**.

24 || IT IS SO ORDERED.

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26 | Dated: , 2008

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HONORABLE MARILYN H. PATEL
UNITED STATES DISTRICT COURT JUDGE

1 Neal A. Potischman (Bar No. 254862)
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UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 || SAN FRANCISCO DIVISION

12 PEPPER BEALL MAUPIN,) CASE NO. CV-08-1513 MHP

13 Plaintiff,) [PROPOSED] ORDER GRANTING
14 v.) TEKNI-PLEX, INC.'S REQUEST TO
15 COLORITE PLASTIC COMPANY,) ADJOURN THE DEADLINE TO MOVE
16 Defendant.) TO DISMISS OR TO ANSWER THE
) COMPLAINT
)
) Complaint served: April 30, 2008

¹⁰ See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

19 The Court, having considered the request of defendant Tekni-Plex, Inc. to adjourn the
20 deadline for defendant to move to dismiss or to answer the Complaint until ten days after the initial
21 Case Management Conference, and GOOD CAUSE APPEARING THEREFOR,

22 Defendant's request to adjourn the deadline to move to dismiss or to answer the Complaint
23 until ten days after the initial Case Management Conference is hereby **GRANTED**.

24 IT IS SO ORDERED.

26 | Dated: . 2008

HONORABLE MARILYN H. PATEL
UNITED STATES DISTRICT COURT JUDGE